

PROPOSED DECISION

Agenda ID #13072 (Rev. 1)

Quasi-legislative

7/10/2014 Item 40

Decision **PROPOSED DECISION OF COMMISSIONER PEEVEY**

(Mailed 6/10/14)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on
Regulations Relating to Passenger
Carriers, Ridesharing, and New
Online-Enabled Transportation Services.

Rulemaking 12-12-011
(Filed December 20, 2012)

DECISION MODIFYING DECISION 13-09-045

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DECISION MODIFYING DECISION 13-09-045**1. Summary**

This decision modifies Decision (D.) 13-09-045 which adopted rules and regulations for Transportation Network Companies (TNC).

The modifications deal with defining TNC services and the insurance the Commission requires while TNC services are being provided. Specifically, the modifications are:

- a. TNC services are defined with three periods. Period One is: App open – waiting for a match. Period Two is: Match accepted – but passenger not yet picked up (i.e. driver is on his/her way to pick up the passenger). Period Three is: Passenger in the vehicle and until the passenger safely exits the vehicle.¹
- b. A minimum of at least \$1 million primary commercial insurance is required for Periods 2 & 3.
- c. A minimum of at least \$100,000 for one person, \$300,000 for more than one person, and \$50,000 for property damage of excess commercial insurance is required for Period 1. As explained in more detail below Period 1 is further complicated because a driver could have multiple apps open while waiting to get matched. This situation makes it impossible to require exclusive and primary insurance and sole duty to defend for insurance purposes. For period 1 we adopt city of Los Angeles' insurance amount that is required for all taxicabs.²

¹ We have heard from at least one airport that it requires that the app stay on until the TNC driver has left airport property. As we stated in D.13-09-045, the TNCs must follow any and all airport regulations the TNCs must keep the app on for any airport that has a requirement that the app stay on after the passenger has been dropped off and can be turned off no sooner than when the TNC driver has left airport property. Additionally, it should be noted that with respect to the three periods listed above, TNC service would still continue in all situations after a passenger has exited a car provided that the driver's app is still open

² LA Muni Code Section 71.14.

d. TNCs can satisfy the insurance requirements by one of two ways; 1) maintaining such insurance on its own or 2) maintaining such insurance on its own in combination with a policy maintained by the TNC driver that is specifically written for the purpose of covering TNC services, or portion thereof.

A TNC's insurance, as required by these regulations, is primary and exclusive and shall assume all liability for Periods 2 and 3. Such policy shall have the sole duty to defend for an incident which occurred during Periods 2 and 3.

In the event a driver maintained policy is used to partially fulfill the insurance requirements, a transportation network company's insurance must provide sole excess coverage to the driver's policy that is specifically written for the purpose of covering transportation network services, or portion thereof. In the event such driver maintained policy ceases to exist due to a coverage lapse, denial of claims, or policy cancellation, the transportation network company's insurance shall provide exclusive coverage, and assume all liability and the sole duty to defend, at dollar one.

Unless coverage for TNC services is separately and specifically stated in the policy and priced pursuant to approval by the California Department of Insurance, a driver's personal automobile policy is in no way required to provide coverage or the duty to defend for Periods 2 and 3.

For Period 1 we are adopting excess commercial policy, because in this period the driver could have multiple apps on and only when a match is made with a passenger will it be certain which TNC is being used. Therefore, it is not reasonable to expect a TNC to provide exclusive and primary insurance during Period 1. It doesn't seem reasonable to have multiple primary coverage that is exclusive and has the sole duty to defend.

The final modification concerns the reporting of communications between interested persons and decision-makers. The Commission exercises its authority under Rule 1.2 of the Commission's Rules of Practice and Procedure to make Rule 8.4 (Reporting *Ex Parte* Communications) applicable to this proceeding.

2. Procedural History

2.1. The Assigned Commissioner's Ruling (ACR)

An Assigned Commissioner's Ruling (ACR) was issued on March 25, 2014, requesting comment on five proposed modifications to D.13-09-045.³ The need to issue that ACR was driven by a number of factors.⁴ First, the phrase "providing TNC services" has been interpreted different ways; second, there was some uncertainty over whether a TNC driver's personal automobile insurance would apply to an incident where the TNC driver is wholly or partially at fault, the app is open, and there is no passenger in the vehicle; and third, the Commission analyzed whether the TNC should provide coverage beyond commercial liability insurance required by our September 22, 2013 decision. Concerns were raised by the California Insurance Commissioner and others about potential gaps in TNC insurance required by our September 22, 2013 decision, including lack of clear requirements for coverage of collision, comprehensive, uninsured/underinsured motorists, and medical expenses. The ACR proposed modifications so that coverage is provided on a consistent basis. The ACR also invited the parties to comment on the proposed changes.

³ ACR, at 2-3.

⁴ Rule 16.4 of the Commission's Rules sets forth the procedure for a party to file a petition for modification, and the Commission also has the power pursuant to Pub. Util. Code § 1708 to modify its decision.

The following parties filed opening comments to the ACR: SideCar, Lyft, United Taxicab Workers, San Francisco Municipal Transportation Agency (SFMTA), San Francisco Cab Association, Luxor, Taxicab Paratransit Association of California (TPAC), Uber, Personal Insurance Federation of California (PIFC), Greater Livery, former mayor Willie L. Brown Jr, Christopher Dolan and the Dolan Law Firm (collectively referred to as Dolan).⁵ The following parties filed replies to the ACR: Sidecar, Lyft, United Taxicab Workers, SFMTA, San Francisco Cab Association, TPAC, Uber, and the Dolan Law Firm.

3. Defining the phrase “Providing TNC Services”

3.1. Comments on the ACR

D.13-09-045 did not specifically define TNC services other than to say for the purpose of TNC services, a ride is considered prearranged if the ride is solicited and accepted via a TNC digital platform before the ride commences.⁶ The ACR proposed to define this term and asked parties for comment, because TNC companies seemed to settle on a definition that was too narrow and did not meet the Commission’s original intent. Thirteen parties filed comments in response to the ACR.

California Airports Council believes the definition must include the time a TNC driver is waiting for notification of new patrons and the time between trips.

City and County of San Francisco supports closing the insurance gap but questions if the proposed modification is sufficient. The City proposes that “providing TNC services” should include those periods in which a driver is (1) en route to pick up a TNC passenger; (2) transporting a TNC passenger;

⁵ Christopher Dolan and the Dolan Law Firm were granted party status, with limitations, by way of an e mail ruling on April 7, 2014.

⁶ D.13-09-045 at 30.

(3) picking up a TNC passenger; (4) dropping off a TNC passenger; or
(5) situated in the TNC vehicle while the app is open or the driver is otherwise available to accept rides from a subscribing TNC passenger.

Dolan Law Firm supports defining this phrase but suggests changing “whenever the TNC driver is using their vehicle” to “whenever the TNC driver is using a vehicle.” Additionally, the phrase “as a public or livery conveyance” should be changed to read “for the purpose of facilitating the actual or prospective transportation of the public, including but not limited to the time that they initially log onto, open, or otherwise indicate their availability as open and available to accept passengers through, a TNC app, until the driver has logged off, closed the application or otherwise indicated they are no longer available to provide TNC services.” Dolan Law Firm asserts this coverage would be similar to what is afforded by other transportation providers such as taxis.

Luxor argues that a vehicle become a commercial vehicle as soon as the driver registers his or her vehicle with a TNC. Otherwise, Luxor fears that there is an open invitation for insurance fraud.

Lyft does not believe the Commission should create a new definition of “providing TNC services” as the current definition is clear and unambiguous. Additionally, adding the phrase “whenever the TNC driver is using their vehicle as a public or livery conveyance” will create ambiguity with the balance of the Phase I decision. The app on/app off concept will also throw the entire regulatory framework into chaos as the decision contemplated a nexus between the provision of transportation for compensation and the concept of providing TNC services. There is no universally accepted meaning of the terms “open,” “closed,” or “available to accept rides.”

PIFC suggests defining the phrase to mean “when participating drivers make themselves available for passengers, which includes, but is not limited to, logging on to the transportation network company’s application program, attaching an insignia or logo indicating the personal motor vehicle as providing transportation network services, or having a fare-paying passenger getting into or out of the vehicle.” PIFC believes this definition will accomplish the Commissioner’s goal of removing gaps in the commercial liability coverage.

San Francisco Cab Drivers Association opposes the proposed definition and instead believes either the TNC or the TNC driver needs to provide each vehicle with 100% insurance coverage, 100% of the time.

SideCar believes the proposed definition is overbroad and would subject TNCs to fraud by unscrupulous drivers and lead to higher than necessary insurance costs.

Summons proposes limiting “providing TNC services” to only those times when TNC drivers are en route to a passenger or are transporting a passenger.

TPAC suggest that rather than basing insurance upon a limited time frame when TNC driver has a specific app open, the appropriate Commercial Auto Liability Insurance policy would cover the vehicles being used to provide transportation services at all times. The Commercial Auto Liability Insurance policy should be commensurate with at least the minimum charter-party carrier requirements for TNCs that provide exclusively pre-arranged services.

Uber suggests that the Commission should maintain the original language of D.13-09-045 with regard to the period during which commercial TNC third-party liability insurance shall apply. While Uber supports establishing coverage requirements for Period 1 (*i.e.*, the driver’s app is open, but the TNC driver has not yet accepted a request for transportation), Uber argues that the Commission

should allow the TNCs and the insurance industry to fashion market-based solutions to address the coverage needs during that period. Uber is also concerned about a TNC driver in Period 1 having contracted with multiple TNCs and keeping all apps open at all times in order to maximize the likelihood of procuring a request for transportation. Uber suggests defining “providing TNCs services” as follows: “Whenever the TNC driver is using their vehicle as a public or livery conveyance, which is from the time the TNC driver accepts a passenger’s request to prearrange transportation services until the time the TNC driver concludes providing such transportation services to the passenger.” As for levels of insurance during Period 1, Uber suggests the Commission should mandate coverage “at least at the limits required by state personal auto policies, but leave open the question of who may purchase such coverage.”

United Taxicab Workers do not believe the proposed modifications will close the TNC coverage gaps.

3.2. Discussion

As this is a new industry, the Commission knew that the rules and regulations it enacted might need to be modified as real-time information about TNC operations became known. The Commission also has the power pursuant to Pub. Util. Code § 1708 to modify its decision:

The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it.

D.13-09-045 uses the phrase “providing TNC services” in a manner that may have caused some confusion. For example, in Application of the TPAC for Rehearing of D.13-09-045, TPAC argues that the “Decision fails to state whether a TNC driver is considered to be providing TNC services when en route to picking

up a passenger, when returning from dropping off a passenger, or when a driver is cruising an area while awaiting a ride request.”⁷ The California Department of Insurance has also recognized this potential uncertainty⁸ and has advocated defining “providing TNC services” to cover the following three periods: Period 1 (App Open – No Match); Period 2 (Match Accepted – Passenger Pick-Up); and Period 3 (Passenger in the Car – Passenger has safely exited the vehicle).⁹

As such, in an effort to eliminate uncertainty, the Commission defines “providing TNC services” as follows:

TNC services are defined with three periods. Period One is: App open – waiting for a match. Period Two is: Match accepted – but passenger not yet picked up (i.e. driver is on his/her way to pick up the passenger). Period Three is: Passenger in the vehicle and until the passenger safely exits the vehicle.

With this definition, we clarify that providing TNC services is not limited to the time between obtaining a recorded acceptance to transport a subscribing TNC passenger or the TNC operator’s travel to pick up that subscribing TNC passenger, transport, or drop-off of that subscribing TNC passenger(s) to his/her/their destination. Instead, this definition is expansive enough to cover all circumstances when the TNC driver is driving and/or waiting to be hired by a subscribing TNC passenger, has accepted a subscribing TNC passenger and is en route to pick up the subscribing TNC passenger, is transporting the subscribing TNC passenger from the pick-up spot to the destination stop, and is

⁷ Application, at 23, and fn. 129.

⁸ See Department of Insurance letters dated January 10, 2014, March 25, 2014, and Background White Paper updated April 1, 2014.

⁹ Department of Insurance letter dated April 7, 2014.

then again driving and/or the app is open to indicate that the driver is available or waiting to be hired by another subscribing TNC passenger. It is our intent that insurance coverage must be consistent with our definition of “providing TNC services” and during those times that those services are being provided.

3.3. Comments on Insurance Coverage in Response to the ACR

As stated above this is a new industry and D.13-09-045 left the proceeding open in the event new data became available that could assist the Commission in refining our policies to further assure public safety, consumer choice, and innovation for the betterment to all Californians. Since the issuance of D.13-09-045 this industry has grown and the Commission has received additional data regarding the operation of TNCs and how TNCs are applying this Commission’s directives. For example, the California Insurance Commissioner raised the specter of potential gaps in TNC insurance required by the Commission’s decision, including lack of clear requirements for coverage of collision, comprehensive, uninsured/underinsured motorists, and medical expenses. As a result of these uncertainties, there are a number of different situations where either no coverage or differing coverage may be available. The Commission’s top priority in this case and all cases is to protect the public while allowing for customer choice and encouraging innovation. Thirteen parties filed comments in response to the ACR.

California Airports Council supports additional insurance requirements at a level similar to other transportation services. The language should also require that airports be listed as additional insured’s to protect airport liability when TNCs are operating on airport property.

City and County of San Francisco (CCSF) argues that the new definition of the phrase “providing TNC services” should remain a part of the decision’s insurance requirement. CCSF believes that the phrase “used as a public livery or conveyance” would add further confusion to the question of when TNC insurance applies to incidents involving TNC vehicles and drivers. CCSF supports additional coverage with the caveat that the comprehensive and collision insurance be \$50,000 per person and \$100,000 per accident as recommended by the California Department of Insurance. Additionally, CCSF requests that TNC insurance be deemed primary, that the TNC insurance policies be made available to the public, and ensure that personal insurance providers are advised of TNC activities of their insureds.

Dolan Law Firm argues that instead of the phrase “used as a public or livery conveyance,” it should state “TNC vehicles providing TNC services” in order to provide consistency throughout the decision. Dolan also supports the additional coverage and limits.

Former mayor Willie L. Brown Jr also supports additional insurance coverage requirements such as Uninsured Motorists Coverage, Comprehensive Coverage, Collision Coverage, and medical payments coverage as a safety measure.

Greater California Livery Association (GCLA) believes additional insurance coverage requirements are fair and responsible. But GCLA suggests that the commercial coverage be primary, transparent to the public, and in force and effect 24 hours per day, 7 days per week. Finally only “A” rated and admitted carriers be allowed to insure TNCs.

Luxor argues for TNCs maintaining full-time primary commercial insurance on all vehicles registered with them for purposes of providing TNC services.

Lyft argues that the Commission need not revise the insurance requirements as there is no documented coverage gap. It cites the settled rule that exclusions in insurance contracts will be narrowly against the insurer. (*White v. Western Title Insurance Company* (1985) 40 Cal. Ed 870, 881.) Lyft concludes that insurers would be unlikely to prevail if they were to invoke this exclusion to deny a TNC driver's coverage under a personal automobile policy during periods when the driver "is in match mode."

PIFC suggests that the TNC commercial liability be primary and clarify that the duty to defend rests with the TNC's primary commercial liability policy.

San Francisco Cab Drivers Association (SFCDA) maintains that TNC drivers and vehicles should be required to obtain full-time commercial livery insurance policies. The coverage limits should be no less than what is required of taxicabs in a given jurisdiction.

SideCar disagrees that the proposed coverage limits are appropriate and, instead, recommends that the \$1,000,000 liability coverage only apply for the period where a ride has been accepted in the app until the ride ends and the passenger exits the vehicle. Contingent third party liability should be \$50,000 per individual bodily injury claim and \$1,000,000 per incident, and property damage up to \$25,000. Contingent collision coverage should be required in the amount of \$50,000.

Summons opposes any new insurance requirements until the insurance market offers financially viable products to meet those requirements.

United Taxicab Workers asserts having separate personal and TNC insurance policies provides an incentive for driver fraud that may be difficult to detect. Instead, TNC drivers must carry commercial livery insurance.

3.4. Discussion

With respect to TNCs, this Commission stepped in to establish basic consumer protection policies in order to promote the safety of passengers, drivers, and the general public. Our role has not been to favor one form of transportation over another. More specifically, we have not chosen to select specific insurance contract language favored by one side or another. Instead, we remain steadfast in promoting safety and consumer choice.

In their comments, the taxicab and limousine industries have advocated that we implement a \$1 million insurance policy for the TNCs and have stated that such a policy would mirror their own requirements. On the other hand, the personal insurance industry has continuously asked for this Commission to recognize that personal insurance should never have a role in a TNC incident. Finally, the TNC companies' original position was that they would cover the first dollar that was not covered by a driver's personal insurance. To further complicate things, just recently some TNCs have conceded that exclusive insurance would be applicable for Periods 2 & 3, while other TNC companies are advocating that personal insurance companies reject the claim first and then the TNC's coverage would begin.

Let's look a little bit more closely at the taxicab industries own policies. Subsequent review indicates that the taxicab industry does not have a unified insurance policy requirement. In fact, only a few cities require a \$1 million

insurance policy.¹⁰ For instance, Los Angeles requires taxicabs to carry a policy that covers a minimum of \$100,000 per person, \$300,000 for more than one person, and \$50,000 for property damage.¹¹

Next, if we look at the limousine industry's insurance requirement for guidance we find that the amount is set by this Commission and it is a combined single policy of \$750,000.¹²

Then if we turn to the personal insurance industry, we are convinced that the industry's sole goal *vis-à-vis* this proceeding has been to make clear to this Commission, the industry, and its policy holders that personal policies would not be applicable for TNC drivers. In point of fact, the insurance industry is not regulated by this Commission but by the California Insurance Department. This industry can set its own requirements and write its own policies. The coverage issues identified by the insurance industry are the more challenging and complicated to address – but the resolution of them is not within the jurisdiction of this Commission. They can, and appropriately should, be solved by the personal insurance industry who can create more tailored products to meet this growing demand. To this end, we applaud Lyft and MetLife Insurance for working together and proffering potential products that would provide insurance for Lyft drivers and passengers in a recent filing with the California Department of Insurance.¹³

While we carefully evaluated and considered the comments presented by the varying constituencies, it is our responsibility to focus on our role to promote

¹⁰ See comments of Uber Technologies on behalf of Raiser (UberX) on the proposed decision at 2.

¹¹ Los Angeles Municipal Code 71.14.

¹² CPUC General Order 115F.

¹³ Comments of Lyft on the proposed decision at 2.

safety of passengers, drivers, and the general public while promoting consumer choice. We are committed to reducing, if not eliminating, the need for litigation resulting from who is and should be providing insurance coverage for injured parties resulting from TNC services. The policy is (and has been since we issued D.13-09-045 in September 2013) that for Periods 2 & 3 the TNC is responsible for providing insurance. This will be primary insurance with a minimum coverage of \$1 million. Again, this requirement can be met in one of two ways; 1) the TNC itself can maintain insurance on its own or 2) a combination of a TNC policy and a driver policy that is specifically written for the purpose of covering TNC services, or portion thereof.

For Period 1, when a driver has multiple apps actively on and is waiting to see which app requests his/her services, we cannot ask for multiple exclusive insurance with the sole duty to defend. In that event, which one will have the sole duty to defend and which one is exclusive when both are on? Our intent is to reduce litigation or better yet eliminate it. We certainly do not want to add to it. Having multiple primary/exclusive insurance seems to add to it. And, for this reason, we will adopt excess commercial insurance which will be available during an incident.

The TNCs insurance companies may litigate with themselves as to who will be providing insurance. However, we hope that in time the insurance companies will solve this issue and create products that will reduce the risk of litigation and provide clear coverage to the injured parties. For this excess commercial insurance requirement, we will adopt Los Angeles' current insurance amount of \$100,000 for one person, \$300,000 for more than one person, and \$50,000 for property damage. While we adopt these rules, we are hopeful that the insurance industry along with its regulator, the California Department of

Insurance, will work together to come up with better insurance products for this growing industry.

3.4.1. The Extent of the Insurance Requirements Ordered by This Decision

We also invited the parties to comment on our proposed expansion of the TNC insurance requirements beyond requiring commercial liability insurance. Specifically, we asked parties comment on whether the Commission should also require TNCs to carry uninsured/ underinsured, medical, comprehensive, and collision coverage.

The Commission has reviewed the comments to the ACR and to this proposed decision. We specifically acknowledge the information provided to us in comments, and confirmed through our own investigation, that the additional coverage (i.e. uninsured/underinsured, collision, comprehensive, and medical payments coverage) we had contemplated is well beyond what is currently required for taxis, limos, and other for hire transportation vehicles. After researching the municipal codes of San Francisco, Los Angeles, Sacramento, Fresno, and Stockton, the California Vehicle Code regulations for taxis and other for hire transportation vehicles, and the Commissions regulations of Charter-party carriers, we find that none of these regulations require such additional insurance requirements.¹⁴ We also note that the \$100,000 per person/ \$300,000 for more than one person in commercial liability insurance for Period One is

¹⁴ See Comments filed by Uber in response to both the ACR and this decision, which reference the SFMTA, LA Municipal Code Section 71.14, Sacramento Municipal Code 5.136.440, Fresno Municipal Code 9-916, Stockton Municipal Code 5.84.480, and California Vehicle Code Section 16500; Lyft's Comments to this decision, at 7-9; and Sidecar's Comments to this decision, at 6-8.

consistent with the coverage limits imposed by LA Municipal Code Section 71.14 for taxis with a seating capacity of 1-7 passengers.¹⁵

We are concerned, therefore, that imposing these additional coverage requirements (i.e. uninsured/underinsured, collision, comprehensive, and medical payments coverage) may make it difficult to for TNCs to satisfy these requirements through the existing insurance market, thus inhibiting the creative environment that has allowed the TNC industry to flourish in California for the benefit of California residents who wish to avail themselves of TNC services. Instead, we believe that tailoring the commercial liability insurance requirements to our clarified definition of “providing TNC services” should provide sufficient coverage protections consistent with those protections afforded to passengers of taxis, limos, other for his transportation carriers, and Charter-party carriers. Of course, the Commission reserves the right to revisit this issue should factual circumstances change or if we are directed by the Legislature to impose additional insurance requirements.¹⁶

3.4.2. Summary of Required Insurance Coverage

We summarize in the chart below the coverage, types, purposes, and amounts:

¹⁵ See Uber’s Comments to the ACR, Exhibit A, and Uber’s Comments to this decision, at 2 and 5.

¹⁶ The Commission acknowledges that Assembly Bill (AB) 2293 (Bonilla), which contains insurance requirements for TNCs, is making its way through the legislative process. As we do not know what the final version of AB 2293 will require, we are prepared to adjust this decision as our legislature directs in the event the final bill contains requirements different than those contained in our decision.

Segment of Providing TNC Services	Type of Coverage Required	Amount
Period One: App is open – waiting for a match	Excess Commercial liability coverage to protect the TNC and the TNC driver against bodily injury and or property damage claims brought by third parties	\$100,000 per person and \$300,000 for more than one person, and \$50,000 for property damage.
Period Two: Match accepted – but passenger not yet picked up	Primary Commercial liability coverage to protect the TNC and the TNC driver against bodily injury and or property damage claims brought by third parties	\$1,000,000 per incident coverage
Period Three: Passenger in car – until passenger safely exits car	Primary Commercial liability coverage to protect the TNC and the TNC driver against bodily injury and or property damage claims brought by third parties	\$1,000,000 per incident coverage

We require that each TNC file their insurance policies under seal with the Commission as part of applying for a permit. Furthermore, the permit for the TNC will automatically expire upon expiration of the insurance policy unless and until the TNC provides an updated insurance policy and applies to renew its permit. The new insurance requirements will apply upon the expiration of the insurance policies in place or one year from the effective date of this decision, whichever is sooner. In the meantime, we encourage the insurance industry to create new products specific to TNC drivers. As such, a TNC may satisfy the insurance requirements, prescribed by these regulations, by one of the following:

1. Maintaining such insurance on its own, or
2. With any combination of a policy maintained by the TNC and a policy maintained by the TNC driver that is specifically written for the purpose of covering TNC services, or portion thereof. Such combination of policies must meet the minimum limits required by these regulations.

In Phase II of this proceeding we will consider whether these policies for both TCP as well as TNC certificate holders should be made public and included in the Commission's website.

3.4.3. Applying the Modified Insurance Requirements to Uber Technologies, Inc.

3.4.3.1. Comments regarding applying modifications to Uber Technologies, Inc.

The California Airports Council supports applying the proposed modifications to Uber Technologies, Inc.

Dolan supports applying the insurance modifications to Uber but also wants them to apply to Raiser-Ca. LLC. Finding of Fact ¶ 26 should also be changed with the phrase "while they are providing Uber services" added at the end following the phrase "incidents involving vehicles and drivers." This same

change should be made at Finding of Fact ¶ 13. Finally, Dolan suggests that the commercial liability coverage be a primary “nonwasting policy” so that defense fees and costs do not eat away at the policy limits.

SFCDA agrees that these modified insurance requirements should apply to Uber.

Uber disagrees, reasoning that as the TNC insurance requirements already apply to Uber’s TNC subsidiary, Rasier-CA LLC, there is no need to apply them to Rasier’s parent entity, Uber. Uber also believes the question is premature as the Commission deferred issues regarding whether Uber should be regulated as a TCP to Phase 2.

United Taxicab Workers argues that Uber should be required to carry commercial livery insurance on all its vehicles.

3.4.3.2. Discussion

We are persuaded by Uber’s comments. The fact of the matter is that Uber Technologies has multiple transportation offerings, however, only UberX (Raiser) provides TNC services. The other transportation offerings are licensed as limo drivers and regulated by this Commission. For instance, offerings such as Uber or Uber Black or Uber SUV are all and should be licensed professional drivers and required to carry commercial insurance of at least \$750,000. Therefore, this decision will require Uber Technologies’ subsidiary UberX (Raiser) to comply with the modified requirements. We will consider whether Uber Technologies should be a TCP itself in Phase II of this proceeding.

4. All *Ex Parte* Communications Must be Reported in this Quasi-Legislative Proceeding.

The above-mentioned ACR also asked for comments on a proposal to treat all communication regarding this proceeding with Commission Decisionmakers

subject to the reporting requirements of our *Ex Parte* communication rules (Rule 8.4).

4.1. Comments on *Ex Parte* Communications

California Airports Council supports making Rule 8.4 applicable to this proceeding. CCSF supports reporting of *ex parte* communications in this proceeding. Lyft sees no reason for the Commission to depart from its *ex parte* rules. SFCDA supports requiring the reporting of *ex parte* communications. SideCar opposes the reporting requirements as they will stifle and hinder the free and abundant communication between Commission staff and the TNC industry. Summons supports having the reporting requirements cover meeting minutes of the Insurance Working Group. TPAC supports making the *ex parte* reporting rules applicable to this proceeding. United Taxicab Workers argues that all *ex parte* communications should be reported.

4.2. Discussion

Normally in any quasi-legislative proceeding, “*ex parte* communications are allowed without restriction or reporting requirement.” (Rule 8.3(a) of the Commission’s Rules of Practice and Procedure.) But the Commission does have the authority “in special cases and for good cause shown,” to “permit deviations from the rules.” (Rule 1.2 of the Commission’s Rules.)

In this instance, we believe there is good cause to deviate from Rule 8.3(a) and, instead, require that all *ex parte* communications between interested persons and decisionmakers be reported pursuant to Rule 8.4. The TNC industry is in a constant state of change in terms of its operations and regulation. To the extent any “interested person”¹⁷ wishes to bring information about any of the above

¹⁷ Pursuant to Rule 8.1(d), “interested person” means any party to the proceeding or the agents or employees of any party; any person with a financial interest, as described in Government

topics – as well as other topics not listed above that are relevant to this proceeding – to a “decision-maker,”¹⁸ we believe that it is vital to the assurance of due process and to the orderly and efficient dissemination of information that all parties to this proceeding receive notice of the communications in accordance with Rule 8.4.

5. Comments on Modified Decision

The proposed modified decision of the assigned Commissioner in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure. The following parties filed comments on June 30, 2014: ACIC, Lyft, PIFC, San Francisco Cab Drivers Association, San Francisco International Airport and SFMTA, Sidecar, TPAC, Uber, and United Taxicab Workers.

ACIC has proposed clarifications to the definition of providing TNC services, and when the duty of excess coverage is triggered. ACIC also asks the Commission to specify the duty of indemnification.¹⁹

Lyft believes that the decision is adopting an expansive and unworkable definition of providing TNC services. Lyft also objects to the decision on the grounds it imposes “arbitrary and unreasonable levels of insurance on TNCs which would far exceed those imposed on other passenger carriers, including TCPs and taxis[.]”²⁰

Code § 87100, et seq.; or a representative acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association who intends to influence the decision of a Commission member on a matter before the Commission.

¹⁸ Pursuant to Rule 8.1(b), “decisionmaker” means “any Commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the assigned Administrative Law Judge, or the Law and Motion Administrative Law Judge.”

¹⁹ ACIC Comments, at 3-5.

²⁰ Lyft Comments, at 1.

PIFC supports the decision in a number of ways but suggests clarifying language regarding the definition of providing TNC services, the maintenance of commercial liability insurance, and the TNC's insurer's duty to defend.²¹

San Francisco Cab Drivers Association opposes the decision on the grounds that the proposed insurance requirements are insufficient because they provide less than full-time commercial livery insurance.²²

San Francisco International Airport and SFMTA supports the Commission's efforts to close the gaps in current TNC insurance coverage requirements but ask that the definition of providing TNC services be expanded to include all times those TNC vehicles are on airport property, regardless of whether an app is on or off, or whether the TNC driver has a passenger.²³

Sidecar argues that the proposed insurance requirements are unjustified and unreasonable as they are not tailored to TNC activities, and would impose requirements beyond what is required by municipalities and this Commission for other transportation services.²⁴

TPAC's comments go well beyond the scope of what was covered by the ACR and this decision, and instead appears to be rearguing points it has raised in the Court of Appeal and the California Supreme Court.²⁵ These comments are beyond the scope of the decision and shall not be considered. We do, however, consider TPAC's comment that TNCs argument that TNCs should be required to maintain primary commercial insurance commensurate with Charter-party

²¹ PIFC Comments, at 1-3.

²² San Francisco Cab Drivers Association Comments, at 1-4.

²³ San Francisco International Airport and SFMTA's Comments, at 1.

²⁴ Sidecar's Comments, at 3-8.

²⁵ TPAC's Comments, at 3-10.

carriers and taxis.²⁶ Finally, TPAC suggests that the *ex parte* reporting rules adopted by this decision should be applied retroactively.²⁷

Uber, as we have noted above, argues that the originally proposed insurance requirements go beyond what is currently required for Charter-party carriers, taxis, limos, and other for hire modes of transportation.²⁸ Uber also objects to the inclusion of Period One in the definition of providing TNC services.²⁹ Instead, Uber argues that coverage for Period One can be satisfied with the imposition of lesser insurance amounts.³⁰ Finally, Uber asks that the Commission not extend the *ex parte* rules to quasi-legislative proceedings such as this proceeding.³¹

United Taxicab Workers oppose the decision on the ground it does not provide the widest scope of coverage because it does not address the period when a driver has his/her app turned off but is nonetheless working.³² They also argue that TNCs should carry full-time commercial livery insurance.³³

Where appropriate, the Commission has made edits to this decision based on some of the comments. Where comments have not been incorporated, they shall be deemed rejected.

²⁶ *Id.*, at 12-13.

²⁷ *Id.*, at 13-14.

²⁸ Uber's Comments, at 4-9.

²⁹ *Id.*, at 9-10.

³⁰ *Id.*, at 12-14.

³¹ *Id.*, at 16.

³² United Taxicab Workers Comments, at 2-3.

³³ *Id.*, at 4-5.

6. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Robert Mason III is the assigned ALJ in this proceeding.

Findings of Fact

1. D.13-09-045 did not adequately define the phrase “providing TNC services.”
2. Parties have differing interpretations of the phrase “providing TNC services.”
3. The California Department of Insurance has advocated a definition of “providing TNC services” that is different than how some insurance companies have defined “providing TNC services.”
4. Some parties have taken the position that a TNC driver’s personal automobile insurance will not apply to an incident arising out of the TNC driver “providing TNC services because of the presence of the public conveyance or livery exclusion.
5. Uber Technologies has multiple transportation offerings, however, only UberX (Raiser) provides TNC services.
6. The other transportation offerings by Uber Technologies are licensed as limo drivers and regulated by this Commission.
7. All Uber offerings other than UberX such as Uber or Uber Black or Uber SUV are all and should be licensed professional drivers and required to carry commercial insurance of at least \$750,000.
8. Communications between “interested persons” and “decision-makers” have occurred during this proceeding without notice to other “interested persons” and without any reporting of the communications.

Conclusions of Law

1. TNC services are defined with three periods. Period One is: App open – waiting for a match. Period Two is: Match accepted – but passenger not yet picked up (i.e. driver is on his/her way to pick up the passenger). Period Three is: Passenger in the vehicle and until the passenger safely exists vehicle.

2. A minimum of at least \$1 million primary commercial insurance is required for Periods 2 & 3.

3. A minimum of at least \$100,000 for one person, \$300,000 for more than one person, and \$50,000 for property damage of excess commercial insurance is required for Period 1.

4. The modified insurance requirements should not be applicable to Uber Technologies, but should apply to its subsidiary UberX which provides TNC services.

O R D E R**IT IS ORDERED** that:

1. Transportation Network Company (TNC) services are defined with three periods. Period One is: App open – waiting for a match. Period Two is: Match accepted – but passenger not yet picked up (i.e. driver is on his/her way to pick up the passenger). Period Three is: Passenger in the vehicle and until the passenger safely exists vehicle.³⁴

³⁴ We have heard from at least one airport that it requires that the app stay on until the TNC driver has left airport property. As we stated in D.13-09-045, the TNCs must follow any and all airport regulations the TNCs must keep the app on for any airport that has a requirement that the app stay on after the passenger has been dropped off and can be turned off no sooner than when the TNC driver has left airport property. Additionally, it should be noted that with respect to the three periods listed above, TNC service would still continue in all situations after a passenger has exited a car provided that the driver's app is still open

2. A minimum of at least \$1 million primary commercial insurance is required for Periods 2 & 3.

3. A minimum of at least \$100,000 for one person, \$300,000 for more than one person, and \$50,000 for property damage of excess commercial insurance is required for Period 1.

4. This insurance requirements can be met in one of two ways; 1) the Transportation Network Company (TNC) itself can maintain insurance on its own or 2) a combination of a TNC policy and a driver policy that is specifically written for the purpose of covering TNC services, or portion thereof.

5. The modified insurance requirements applies to Uber's subsidiary Raiser (UberX). We will consider whether Uber Technologies itself should be a TCP in Phase II of this proceeding.

6. Only UberX from the various Uber Technologies offerings is permitted to provide TNC services.

7. All other Uber offerings except for UberX should be licensed TCP drivers with an active permit from this Commission.

8. We require that all *ex parte* communications between interested persons and decisionmakers be reported pursuant to Rule 8.4 of the Commission's Rules of Practice and Procedure.

9. Rulemaking 12-12-011 remains open.

This order is effective today.

Dated _____, at San Francisco, California.